



County of Bernalillo
State of New Mexico

Planning and Development Services

111 Union Square SE, Suite 100

Albuquerque, New Mexico 87102

Office: (505) 314-0350

www.bernco.gov/zoning-building-and-planning/

NOTICE OF APPEAL

January 5, 2015

COMMISSIONERS

Debbie O'Malley, Chair
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Lonnie C. Talbert, Member
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Assessor

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Probate Judge

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Sheriff

Manny Ortiz
Treasurer

To Whom It May Concern:

The following appeal has been filed with the Bernalillo County Planning and Development Services:

APPEAL NO: ZCOA2015-0009 ORIGINAL CASE NO: SPR-20130004

APPELLANT: Name: South Valley Regional Association of Acequias

Address: 5734 Evans Road SW, Albuquerque, NM 87105

REASON FOR APPEAL: See Attached

SCHEDULED FOR PUBLIC HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS ON:

Thursday, February 19, 2015 at 1:30 P.M., at the Vincent E. Griego Chambers, Concourse Level II, One Civic Plaza, NW.

You and all other interested parties are invited and urged to be present at this hearing.

Applicants, agents and those in support or opposition to a request are now required to submit all evidence and presentation materials to the Board of County Commissioners (BCC) through the staff.

Es necesario traer un interprete si no habla ingles o puede llamar a Miriam Aguilar al 314-0369.

If you have any questions, please do not hesitate to contact me at 314-0385.

Sincerely,

ENRICO GRADI

Enrico Gradi
Community Development Manager

EG/fs

cc: File

Kevin Grovet, Public Work
Christi L. Tanner, Public Works
New Mexico Environment Law Center, 1405 Luisa St. #5, Santa Fe, NM 87505
Rodey Law Firm, John P. Salazar, P.O. Box 1888, Albuquerque, NM 87103
Western Albuquerque Land Holding LLC
6991 E. Camelback Road, Suite B297, Scottsdale, AZ 85251
Consensus Planning, 302 8th St NW, Albuquerque, NM 87102
Albuquerque Public Schools, Brad Winter, P.O. Box 25704, Albuquerque, NM 87125
Melinda Taber, USDOT/FAA,
Real Estate and Utilities Group, ASW-53, 2601 Meacham Blvd., FT. Worth, TX 76137
Carol and Gilbert Perez, 4621 Spring Valley SW, Albuquerque, NM 87105
Rudy and Angel Garcia, 1200 Don Francison PL. NW, Albuquerque, NM 87105
Charles W. Travelstem, 6100 Buffalo Grass Ct. NE, Albuquerque, NM 87111
Frank Sanchez, 609 Briar Rd., Bellingham, WA 98225
Ruben Marquez, 2927 Cubrul Tr. SW, Albuquerque, NM 87121
Claus Zahn, 9 Dama Rd., Los Lunas, NM 87031
Toan Luong, 1835 Shadow Leader SE, Albuquerque, NM 87123
James Thomas, 2641 San Mateo NE, Albuquerque, NM 87110
Lynette Gallegos, 8623 Bouvandie Ave. NW, Albuquerque, NM 87120
Gary Bernier, 3604 Silver Ave. SE, Albuquerque, NM 87109
Carlos Profit, 5805 Coors Blvd. SW, Albuquerque, NM 87121
Alicia Kassa, 5609 Kimberlite Dr. NW, Albuquerque, NM 87120
Richard Austin, 8423 Mendocino, Dr. NE, Albuquerque, NM 87122
Rod Mahoney, 1838 Sadora Rd. SW, Albuquerque, NM 87105
Andrew Gingerich, MRCOG, 809 Copper Ave, NW, Albuquerque, NM 87102
Marisol Archuleta, 3615 Big Cottonwood Dr. SW, Albuquerque, NM 87105
Diane Reese, 1620 Bernard Thomas Lane SW, Albuquerque, NM 87105
Michael Reed, 2401 Black Mesa Loop SW, Albuquerque, NM 87105
Nathan Perez, 2250 Hyde Street, San Francisco, CA 94109
Zoe Economou, 214 Riverside Dr. SW, Albuquerque, NM 87105
Marcia Fernandez and Rip Anderson, 2401 Violet SW, Albuquerque, NM 87105
Senoria Garcia, 1923 Arenal Rd. SW, Albuquerque, NM 87105
Phillip Kleh, 803 Vassar Dr. SE, Albuquerque, NM 87106
Conrad Zahn, 9 Dama Rd., Los Lunas, NM 87031
Adam Rubinstein, 1431 ½ La Vega SW, Albuquerque, NM 87105
Jay Phelan, 545 Shirk Ln. SW, Albuquerque, NM 87105
Donald L. Hall, 9101 Lagrima de Orone NE, Albuquerque, NM 87111
Lauro Silva, 5005 5th St SW, Albuquerque, NM 87105
Pat McCraw, 3301-R Coors #296, Albuquerque, NM 87121
Jerome Padilla, 3408 Calle Facio NW, Albuquerque, NM 87104
Sara Juarez, 933 Nashville SW, Albuquerque, NM 87105
Roberto Roibal, 2233 Don Felipe Rd. SW, Albuquerque, NM 87105
Juan Reynosa, 211 10th St SW, Albuquerque, NM 87102
James Santiago Maestas, 5734 Evans Rd. SW, Albuquerque, NM 87105

Virginia Neochea, 1212 Montrose SW, Albuquerque, NM 87105
Jorge Garica, 1212 Montrose Pl. SW, Albuquerque, NM 87105
Joe Berumen, 11930 Central SW, Albuquerque, NM 87121
Renee Horvath, 5515 Palomino Dr. NE, Albuquerque, NM 87120
Pablo and Andrea Lopez, 1843 Five Points Rd. SW, Albuquerque, NM 87105
Peter Eschman, 1916 Conita Real Ave. SW, Albuquerque, NM 87105
Elaine Hebard, 1513 Escalante SW, Albuquerque, NM 87104
Susan Elliott, 2231 Lakeview Rd. SW, Albuquerque, NM 87105
Julie Stephens, 4800 Congress NW, Albuquerque, NM 87114
Town of Atrisco Grant, Jerome Padilla, 2708 Rosendo Garcia SW, Atrisco, New Mexico 87105
Jerry Gallegos, 6013 Sunset Gardens SW, Albuquerque, NM 87121
Dave D. Meinke, 1826 Poplar Lane SW, Bldg #2, Albuquerque, NM 87105
Jose and Flora Sanchez, 5838 Isleta Blvd. SW, Albuquerque, NM 87105
Tomasita Espinoza, P.O. Box 72465, Albuquerque, NM 87195
Sylvia Diaz-Donville, P.O. Box 7143, Albuquerque, NM 87194
Onesimus Al-Amin, 6135 Full Moon Ave. NW, Albuquerque, NM 87114
Sisto Abeyta, 2140 Margo Rd. SW, Albuquerque, NM 87105
Joseph A. Wasson Jr. and Sandra Salas Wasson, 2948 Joe Sanchez SW, Albuquerque, NM 87105
Bradley Conway, 2105 Gold Ave. SE, Albuquerque, NM 87106
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Janelle Astorga, 1912 John St. SE, Albuquerque, NM 87102
Justice Irons, 2512 Los Padilla Rd. SW, Albuquerque, NM 87105
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Vanessa Alarid, 544 61st. NW, Albuquerque, NM 87105
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Matt Butcher, 6991 E. Camelback Rd. B-297, Scottsdale, AZ 85251
Col. Robert F. Cunningham & Kathryn Malone, 1826 Poplar Lane SW, Albuquerque, NM 87105
Andres Lazo, 3220 Grasshopper Dr. SW, Albuquerque, NM 87121
Jacque Garcia, 7424 Euclid Ave. NE, Albuquerque, NM 87110
Travis McKenzie, 415 Thaxton Ave. SE, Albuquerque, NM 87108
Michelle Meaders, 4047 Anderson Ave. SE, Albuquerque, NM 87108
Jack L. and Margie Mortley, 2830 Rio Bravo SW, Albuquerque, NM 87105
John Garcia, 4100 Wolcott NE, #B, Albuquerque, NM 87109
Susan Selbin, 2431 Northwest Cir. NW, Albuquerque, NM 87104
Kyle Harwood, 1660 A Old Pecos Trail, Santa FE, 87505
Bea Aragon, 6021 Beck Road SW, Albuquerque, NM 87105
Paul Silverman/Erin Muffoetto, 115 Gold Ave. SW, #115, Albuquerque, NM 87102
James Topmiller, 7500 Jefferson NE, Albuquerque, NM 87109
Jeff Gavvett, 1130 Laves Eve NW, Albuquerque, NM 87114
Brad Lagorio, 2405 Meadow Rd. SW, Albuquerque, NM 87105
Candelaria Patterson, 7608 Elderwood NW, Albuquerque, NM 87120
Andres Romero, 7411 Isleta SW, Albuquerque, NM 87105
Laurel E. Drew, 1905 Gun Club Rd. SW, Albuquerque, NM 87105
Susanne Bronon, 300 Tulave Pl. NE, Albuquerque, NM 87106

Jean Merriman, 1816 Van Court SW, Albuquerque, NM 87105
Louis Head, 802 Headingly Ave. NW, Albuquerque, NM 87107
Emma Sandoval, 1128 18th St NW, Albuquerque, NM 87104
Juan Reynosa, 211 10th St. SW, Albuquerque, NM 87102
Senator Linda M. Lopez, 9132 Suncrest SW, Albuquerque, NM 87121
Kristine Suozzi, 1312 Bryn Mawr NE, Albuquerque, NM 87106
Jacque Garcia, 7424 Euclid Ave. NE, Albuquerque, NM 87110
Monica Trujillo, 561 Coronado Dr., Bernalillo, NM 87004
Maria Gallegos, 6939 Via del Cerro NE, Albuquerque, NM 87113
James Chavez, 2708 Rosendo Garica SW, Albuquerque, NM 87105
Dustin Chavez-Davis, 611 Leas Ave SW, #708, Albuquerque, NM 87102
Daniel Michel, 423 11th ST. SW, Albuquerque, NM 87102
Bradie Mitchell, 6517 Mesa Solana Pl. NW, Albuquerque, NM 87120
Adrian N. Carver, 433 Carlisle Blvd. NE, Albuquerque, NM 87106
Vicente Garcia, 370 Atrisco Ave. SW, Albuquerque, NM 87105
Loren Gomez, 2700 Rosendo Garcia SW, Albuquerque, NM 87105
Javier Benavidez, 1115 Barelaz SW, Albuquerque, NM 87102
Matthew and David Esparza, P.O. Box 3932, Albuquerque, NM 87190
Bill Chappell, 6001 Indian School Rd. NE, #150, Albuquerque, NM 87110
Jeff Garrett, 6991 E. Camelback Rd. B-297, Scottsdale, AZ 85251
Paul Duran, 2409 Metzgar SW, Albuquerque, NM 87105
Isaac Benton, City Council, One Civic Plaza, Albuquerque, NM 87102
Alan Reed, 3105 Don Quixote Ct. NW, Albuquerque, NM 87104
Camilla Feibelman, 524 Dartmouth Pl. SE, Albuquerque, NM 87106
Luther C. Garcia, 7904 Coors Blvd. SW, Albuquerque, NM 87121
Rob Leutheuser, 1550 Yakima SW, Albuquerque, NM 87105
Roxanne Allen, 1004 Manzano Ct. NW, Albuquerque, NM 87102
Alexander, Snyder, 1902 Conita Real SW, Albuquerque, NM 87105
David Vogel, 601 Aliso Dr. SE, Albuquerque, NM 87105
Fernando Ortega and Lucinda Johnson, 1210 Bareles Rd. SW, Albuquerque, NM 87102
Greg Tucker and Carol Cooperrider, 1915 Lakeview SW, Albuquerque, NM 87105
Carol Bennson, 1749 Miracerros Pl. NE, Albuquerque, NM 87106
Kelly O'Donnell, 1473 W Ella Dr. Corrales, NM 87048
Tomas Atencio Pacheco, 2128 Lakeview Rd. SW, Albuquerque, NM 87105
Janet Greenwald, 215 Hartline SW, Albuquerque, NM 87105
Marilyn Baner, 2109 Lakeview SW, Albuquerque, NM 87105
Sara Keeney, 1112 La Font Rd. SW, Albuquerque, NM 87105
Jimmy Petitt, 1321 Jeanette SW, Albuquerque, NM 87105
Marla Painter, 506 Valley High SW, Albuquerque, NM 87105
Eleanor Chavez, 1307 Del Mastro SW, Albuquerque, NM 87105
Monica Trujillo, 625 Silver Ave, NE, Albuquerque, NM 87102
Tatiana Ruiz, 620 Cordero Rd. NE, Albuquerque, NM 87102
Giselle Fierro, 2326 Felicitas SW, Albuquerque, NM 87105
Alfred Delgado, 5500 Valle Vista Rd. SW, Albuquerque, NM 87105
Sean-Paul VonAncken, 1609 Silver SE, Albuquerque, NM 87106
Tom Gevsz, 124 Edith Blvd. SE, Albuquerque, NM 87102

Andrea Serrano, 411 Bellamah Ave. NW, Albuquerque, NM 87102

John Varsa, 609 Encino Pl. NE, Albuquerque, NM 87102

Sally Bergen, 1908 Caayno de Compania NW, Albuquerque, NM 87107

Peter Hebard, 1513 Escalante Ave. SW, Albuquerque, NM 87104

Rita Daniels, 800 Alvarado Dr. SE, Albuquerque, NM 87108



County of Bernalillo

State of New Mexico

Planning & Development Services

111 Union Square SE, Suite 100

Albuquerque, New Mexico 87102

(505) 314-0350

APPLICATION

SITE ADDRESS/LOCATION

0 NA, ****DO NOT EDIT****

PERMIT NO: ZCOA2015-0009

Printed: December 29, 2014

PROPERTY OWNER

WESTERN ALBUQU LAND HOLDINGS LL

PO BOX 56790

ALBUQUERQUE, NM 87187

UPC

100205525821640201

LEGAL DESCRIPTION

TR 210 ROW 1 UNIT B WEST OF

WESTLAND LESS POR OUT TO R/W CON

T 3.62 AC

AGENT

Fees Paid: \$100.00

Description: Appeal of SPR-20130004, Santolina Master Plan.

Appealed by South Valley Regional Assoc. of Acequias

Agent Santiago "James" Maestas

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING LAND USE.

Signature:

Santiago Maestas
(Applicant/Owner Or Authorized Agent)

12/29/2014
Date

Approved By:

[Signature]
(ZBP Staff)

12.29.14
Date



County of Bernalillo

State of New Mexico

Planning & Development Services

111 Union Square SE, Suite 100

Albuquerque, New Mexico 87102

(505) 314-0350

APPLICATION

FOR INFORMATION CALL (505) 314-0350

Hearing Date: 02/19/2015

Sign Posting Date(s)

From:

To:

BERNALILLO COUNTY

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102
(505) 314-0350 Fax: (505) 314-0480
www.bernco.gov



ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: 12/29/2014
Application Number: ~~2015-0009~~ 2015-0227
Hearing Date: 12/19/2015

2COA
2015-0009

OWNER/ APPLICANT FOR LAND USE REQUEST Western Albuquerque Land Holdings		PHONE (505) 764-9801
MAILING ADDRESS P.O. Box 56790	CITY Albuquerque	ZIP 87187

AGENT (FOR APPELLANT) Santiago "James" Maestas		PHONE (505) 877-8200
MAILING ADDRESS 5734 Evans Rd. SW	CITY Albuquerque	ZIP 87105

APPELLANT South Valley Regional Assoc. of Areguias		PHONE (505) 877-8200
MAILING ADDRESS 5734 Evans Rd. SW	CITY Albuquerque	ZIP 87105

SITE ADDRESS		Case #
DIRECTIONS Bounded by Interstate 40 north 118st. and escarpment to east		
LEGAL DESCRIPTION Pajarito mesa on south and escarpment near Rio Puerco Please see attached legal description		
ZONE MAP PAGE	CURRENT ZONE(S) A-1	PROPERTY SIZE IN ACREAGE 13,700
UPC #	PROPOSED ZONE(S) Master Plan	SUBDIVISION NAME Santolina

CASE # & SCOPE OF APPEAL Appeal Bernalillo County Planning Commission decision on Santolina Master Plan, see attached appeal

DETAILED INFORMATION Appeal of SPR-20130004 Please see attached appeal document

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Santiago Maestas Santiago Maestas 12/29/2014
Printed Name Signature Date

LEGAL DESCRIPTION

Projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,851 acres, generally zoned A-1 Rural Agricultural.

BEFORE THE BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

SOUTH VALLEY REGIONAL ASSOCIATION
OF ACEQUIAS and CENTER FOR SOCIAL
SUSTAINABLE SYSTEMS

v.

FILE NO. SPR-20130004

BERNALILLO COUNTY PLANNING COMMISSION

APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION
RECOMMENDATION THAT THE
BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS
APPROVE THE SANTOLINA MASTER PLAN

Introduction

This is an appeal of the Bernalillo County Planning Commission (“the Planning Commission”) recommendation that the Bernalillo County Board of County Commissioners approve the proposed Santolina development master plan (“the Santolina Master Plan”). This appeal is filed by the South Valley Regional Association of Acequias, and the Center for Social Sustainable Systems (referred to collectively as “the Appellants”).

The recommendation of the Planning Commission (“the Planning Commission’s Recommendation”) was determined by a vote of the Planning Commission on December 3, 2014. Because the written notice of the Planning Commission’s Recommendation was not issued until December 12, 2014, the Appellants reserve the right to file this Appeal prior to 12:00 noon on December 29, 2014, which is the first work day following the 15th day after the written announcement of the Planning Commission’s Recommendation. (The written announcement was dated December 12, 2014, and the 15th day after that date is December 27th, a Saturday.)

In addition, the Appellants reserve the right to address the Bernalillo County Board of County Commissioners concerning this appeal for themselves at any hearing conducted by the Board of County Commissioners addressing the proposed development.

The Appellants request that the members of the Bernalillo County Board of County Commissioners reject the Bernalillo County Planning Commission's recommendation ("the Planning Commission's Recommendation") that the Santolina Master Plan be approved.

The Appellants' request is based on the following reason:

The Santolina Master Plan does not comply with the requirements of the Bernalillo County Planned Community Criteria ("the Planned Community Criteria") that a developer provide documentation of physical and legal water availability.

The Appellants are very concerned about the proposed Santolina development because of the impact that it would have on acequia users of water in Bernalillo county, particularly users in the South Valley. These concerns were expressed to the County Planning Commission at various points during its consideration of the Santolina Master Plan. For example, these concerns were raised for the first time in a May 19, 2014 letter and supporting documents from Santiago "James" Maestas, President of the South Valley Regional Association of Acequias to Joe Chavez, Chair of the County Planning Commission. (These documents are part of Attachment 15 to the County Planning Commission Staff Report dated December 3, 2014 ["the Planning Staff Report"].) Those concerns are that the water for this development will require the "retirement" or transfer of acequia Pre-1907 water rights from irrigated lands in the south valley of to satisfy the conditions of approval of the ABCWUA ground water permit RG-960. Our concerns were also expressed by Virginia Necochea, Executive Director of the Center for Social Sustainable Systems in her memo of July 18, 2014 addressed to Joe Chavez, Catherine

VerEecke and Commission Members *See* articles in *La Voz* part of Attachment 20 of the Planning Staff Report. The Appellants' also raised additional concerns over the geologic and soils conditions, foreclosure rates, health, and the developer's water rights in the letters to Joe Chavez, Chairman dated on September 20, 2014 and September 22, 2014 included in Attachments 26 and 27 of the Planning Staff Report. Most if not all of the soils in the master plan area in fact covering 10,000 year old sand dunes.

In the words of the Southwest Organizing project, NM Health Equity Working, and Pajarito Village Association (SWOP *Etal.*) appeal dated December 18, 2014 "The concerns of the Appellants are exacerbated by the failure of the Santolina Master Plan to provide required information about the sources from which it would obtain water and the failure of the County Planning Commission to require that such information be provided."

As noted by the SWOP *Etal.* Appeal, "the Planned Community Criteria makes clear that a developer of a proposed planned community must provide documentation of physical and legal water availability for the proposed development."

The Santolina Master Plan has failed to comply with this requirement. The Albuquerque Bernalillo County Water Utility Authority ("the Water Authority") letter cited by the Plan does not indicate that either water rights or water are available. In fact the State Engineer Office's memoranda dated October 25, 2013 accounting of the Water Authority permits for 2012, submitted by the Appellants included in Attachment 20 of the Planning Staff Report provides evidence in record that the Water Authority does not have the additional 14,900 acre/ft of water rights needed by the plan.

The Water Authority's own 2007 Water Resources Management Strategy indicates that new developments such as Santolina that are outside of the current Water Authority service area must either provide their own water rights or provide funding with which to

acquire water rights in accordance with the no-net-expense strategy. The Water Resources Management Strategy was submitted to the County Planning Commission with the May 18, 2014 letter from the Appellant Santiago Maestas to Catherine VerEecke See Attachment 20 of the Planning Staff's Report.

In the memorandum dated September 22, 2014 the Appellant Virginia Necochea informed the Chairman and the planning commission members that the developer's agent Jeff Garrett, had recorded with the Office of the State Engineer the transfer of a significant amount of surface and groundwater rights from Westland Development LP to Western Albuquerque Land Holding(WALH) See Attachment 27 of the Planning Staff's Report On November 19, 2014 David Exparza addressed the issue in a e-mail to Nano Chavez and Enrico Gradi informing the Planning Commission that WALH and Esparza Hyrdrology Inc. own a total of 5,600 acre/ft of water rights from the Westland Development LP See Additioal Opposition for 12-3-2014 Planning Staff's Report. Further research has found that WALH has not provided documentation of a multitude of surface and ground water declarations filed along with SD- 4816-4866 and RG 75175-7513 . of surface and ground water rights available for the proposed development.

Finally, the Appellant's letter dated November 25, 2014 to Joe Chavez, pointed out the Water Authority's Water Supply Charge of \$1,456 does not cover the cost of \$10,000 per residential lot for the purchase of water rights. At the December 3, 2014 hearing Mr. Maestas provided as evidence of record a copy of page 45 The Price of Water (Brown 2008) from UNM's Dr. Bruce Thomson power point Water Resources and Issues in Central New Mexico Submitted for evidence of record by Appealant on September 21, 2014

The Santolina Master Plan therefore does not comply with the requirement that a developer demonstrate the availability of water rights and water at no-net-expense.

Conclusion

The Santolina Master Plan fails to comply with several of the requirements that apply to such proposed developments. The Bernalillo County Board of County Commissioners should reject the County Planning Commission's recommendation that the Santolina Master Plan be approved. The Board of County Commissioners also should rule that the Santolina Master Plan is disapproved because of its failure to comply with the applicable Bernalillo County requirements.

Dated: December 27, 2014.

SOUTH VALLEY REGIONAL
ASSOCIATION OF ACEQUIAS



Santiago "James" Maestas
5734 Evans Rd. SW
Albuquerque, NM 87105
Telephone: (505) 877-8200
maestasy@netzero.net

CENTER FOR SOCIAL
SUSTAINABLE SYSTEMS



Virginia Necoechea
1212 Montrose Pl. SW
Albuquerque, NM 87105
Telephone: (505) 304-8724
vneco@hotmail.com

Certificate of Service

I certify that on December 29, 2014 copies of this Appeal were hand delivered to:

James K. Strozier, AICP
Consensus Planning
302 Eighth Street, N.W.
Albuquerque, N.M. 87102

Agent for Western Albuquerque
Land Holdings, LLC

Randy Autio
Bernalillo County Attorney
Bernalillo County Attorney's Office
Fourth floor
520 Lomas Blvd., N.W.
Albuquerque, N.M. 87102-2118

Attorney for Bernalillo County


Santiago "James" Maestas



County of Bernalillo
State of New Mexico

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, New Mexico 87102
Office: (505) 314-0350

www.bernalillo.gov/zoning-building-and-planning

NOTIFICATION OF DECISION
COUNTY PLANNING COMMISSION

December 12, 2014

COMMISSIONERS

Debbie O'Malley, Chair
District 1

Art De La Cruz, Vice Chair
District 2

Maggie Hart Stebbins, Member
District 3

Lonnie C. Talbert, Member
District 4

Wayne A. Johnson, Member
District 5

COUNTY MANAGER

Tom Zdunek

ELECTED OFFICIALS

Tanya R. Giddings
Assessor

Maggie Toulouse Oliver
Clerk

Willow Misty Parks
Probate Judge

Dan Houston
Sheriff

Manny Ortiz
Treasurer

Western Albuquerque Land Holdings, Youth Development, Inc.
P. O. Box 56790
Albuquerque, NM 87187

SUBJECT: FILE NO: SPR-20130004

LEGAL DESCRIPTION: Consensus Planning, agent for Western Albuquerque Land Holdings, Youth Development, Inc., and Central New Mexico Community College and Martin Eckert, agent for Albuquerque Public Schools is proposing a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.
(CONTINUED FROM THE OCTOBER 1, 2014 HEARING)

ACTION: RECOMMEND TO THE BOARD OF COUNTY COMMISSIONER'S APPROVAL OF A PLANNED COMMUNITIES LEVEL A MASTER PLAN CALLED THE SANTOLINA MASTER PLAN

To Whom It May Concern:

At the December 3, 2014 public hearing, the County Planning Commission approved the request for a a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,700 acres, generally zoned A-1 Rural Agricultural.

The decision was based on the following Findings and is subject to the following Conditions.

Findings:

1. This is a request for a Planned Communities Level A Master Plan called the Santolina Master Plan. The plan area is generally bounded by Interstate 40 to the north, 118th Street and the escarpment open space to the east, the Pajarito Mesa on the south, and the escarpment area adjacent to the Rio Puerco Valley on the west, encompassing projected sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T9N, R1E and sections 6, 7, 8, 16, 17, & 18, T9N, R2E and sections 32, 33, 34, 35, & 36, T10N, R1E and sections 30 & 31, T9N, R2E, N.M.P.M., Town of Atrisco Grant, Albuquerque, Bernalillo County, New Mexico and containing and approximately 13,851 acres, generally zoned A-1 Rural Agricultural.
2. The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone) (CZ-20130009).
3. The Santolina development will take place within the next 40-50 years in accordance with the Level A Santolina Master Plan and subsequent Level B and Level C Plans. The Plan is responsive to the population and economic growth that is anticipated to occur in the Albuquerque Metropolitan Area by the Mid-Region Council of Governments.
4. The plan includes goals of providing for mixed land uses, a broad range of housing, employment, educational, and recreational opportunities in distinct residential village centers, industrial/business parks, parks and Open space, an urban center, a business park, and a town center with an open space network that provides connections to all portions of the development. The plan area will have a total build-out of approximately 38,045 dwelling units with concentrations that eventually will be high enough to support transit and extensive open space, parks, and trail networks. The overall gross residential density of the Santolina Community shall not exceed 2.7 dwelling units per acre, as specified in the Level A Plan.
5. The Santolina Level A Master Plan is consistent with the Albuquerque/Bernalillo County Comprehensive Plan policies for the Reserve Area that call for substantial self-sufficiency and environmental sensitivity and development that is at no net cost to Bernalillo County.
6. The Santolina Level A Master Plan complies with the criteria found in the Planned Communities Criteria for Level A Master Plans for land use, transportation, environment and open space, and government and public services, in a manner that can serve as the basis for a Development Agreement between the County of Bernalillo and the applicant and for subsequent Level B and Level C Plans required for the development of the Santolina Community.
7. The Level A Development Agreement is being prepared for execution by the Board of County Commissioners and the Developer at the time of approval of the Level A Santolina Master Plan and Planned Communities Zoning to ensure compliance with the Level A Planned Communities Criteria and that the development will be at no net cost to Bernalillo County. Development agreements with other local governments are not required at this stage.

8. Section 19.5.A.2 PC Planned Communities Zone of the Zoning Code requires the Level A Development Agreement to govern the interim permissive and conditional uses until a Level B plan has been adopted. The area proposed for the Level A Santolina Planned Community currently has existing sites that contain Special Use Permits as approved and regulated by Section 18, Special Use Permits of the Zoning Code and potential sites for local and state economic development projects. The remaining portions of the Santolina boundary area is undeveloped and are expected to remain undeveloped until a Level B and Level C plan is adopted.
9. The proposed Santolina development is suited for approval as a planned community as a result of (1) a large contiguous tract of land primarily under a single ownership, (2) its location on the urban fringe with limited existing development or infrastructure and the potential to function as a self-sufficient community, (3) its proximity to existing suburban and urban areas, (4) its potential for a wide range of activities, land uses and housing types, (5) its opportunity for a network of community open space and recreation facilities, (6) its opportunity for an integrated multi-modal transportation network, and (7) its opportunity to provide a systematic and financially responsible provision of infrastructure and community facilities.
10. The Santolina Level A Transportation Plan and Land Use Plans recognize the importance of maintaining a reasonable balance between residential uses and employment uses throughout the development of the property. The jobs/housing balance is a critical component of the sustainability of Santolina.
11. The Santolina Level A Transportation Plan provides an acceptable transportation network that will adequately serve the proposed development, will connect to existing and proposed future roadways, and will be followed and further elaborated upon in subsequent Level B and Level C Planning.
12. A Santolina Level A Fiscal Impact Analysis and an Economic Impact Analysis have been prepared in conformity with the Level A Planned Communities Criteria and demonstrates substantial benefits to Bernalillo County. However, there are no concrete assurances that market demand currently exists for the development.
13. The Santolina Level A Master Plan provides for a permanent open space buffer and an internal open space network consistent with the Planned Communities Criteria and with the Albuquerque/Bernalillo County Comprehensive Plan. Per the Planned Communities Criteria, Major Public Open Space (MPOS) has been distinguished from other 'Open Space,' however the method of conveyance and proposed phasing of the conveyance of MPOS has not been identified, or included in the economic impact analysis and must be consistent with the policy of no net expense to the County.
14. The current version of the Level A Plan shows major arterials cutting through MPOS, which is not consistent with the purposes, policies, and uses for Major Public Open Space in the Comprehensive Plan or the Major Public Open Space Facility Plan. Several of the proposed roads on the east side of Santolina are consistent with the current draft of the Metropolitan Transportation Plan, and those proposed on the west side of Santolina are not.

15. The Santolina Level A Master Plan provides for a network of parks, recreation and open space facilities consistent with the Bernalillo County Parks, Open Space and Trails Master Plan. However, the current version of the economic analysis does not fully account for all the operational expenses of the proposed Parks and Open Space system at full build-out, including the costs of operating community centers, aquatic centers and the full cost of operating parks and open spaces, and therefore is not consistent with the policy of no net expense to the County. Also, in the current version of the Plan and corresponding fiscal analysis, the connection between phasing of development and the phasing of the conveyance and construction of appurtenant recreation and open space facilities is unclear, and therefore it is not possible to determine whether there will be sufficient funds from development to support the construction and operation of recreation facilities to support this development.
16. A Level 1 Archeological study has been conducted as required for a Level A Planned Communities Master Plan. More detailed investigations are required by the Planned Community Criteria for Level B and Level C plans, as well as by the Bernalillo County Subdivision Ordinance.
17. In accordance with the purpose and intent of its Water Conservation Ordinance to reduce per capita water use, encourage responsible use of water, and require conservation measures for new development and preserve water supplies within Bernalillo County, and in accordance with Policy L of the ABCWUAs Water Resource Management Strategy, the County has taken water supply availability and cumulative impacts into account in making a land use development decision and in determining the legal and physical availability of water for the Santolina Master Plan.
18. Through a letter dated 29 July 2014, ABCWUA has represented that they are capable of serving the master planned community, contingent upon the developer's ability to comply with ABCWUA current guidelines, policies, and ordinances, as amended from time to time. Through provision of the referenced letter and the associated representation by the ABCWUA, the applicant has demonstrated the physical and legal availability of water and wastewater as required in the Level A Planned Communities Criteria.
19. As represented by the applicant in Table A of applicant's 23 May 2014 memorandum which is included by the applicant in the 4 November 2014 revision to the Water Master Plan (page 3), the estimated water use (or average day use), at ultimate buildout is estimated to be 14,380 ac-ft/yr and is to be provided by the ABCWUA under terms and conditions to be determined by the ABCWUA as part of its development agreement.
20. The Santolina Level A Master Plan includes an acceptable plan for drainage and stormwater management that is consistent with the natural environment and addresses the requirements of Bernalillo County, AMAFCA, and the ABCWUA.
21. Bernalillo County has approximately \$450 million dollars in unfunded capital infrastructure facility needs currently in its 2014-2020 Capital Improvement Plan, and the financial impact of Santolina infrastructure development cannot add to this unfunded amount.
22. The proposed Santolina development is within the Albuquerque Public Schools (APS) district boundaries. The schools anticipated to be needed within the (over the next forty to fifty years) are

not included in APS's current Facilities Master Plan, and APS has not approved any school sites or construction of any schools within the Santolina Plan Area.

23. The request for Level A Planned Community Zoning for Santolina is consistent with Resolution 116-86. It provides an overall development strategy and master plan for the approximately 13,851 acre site over the next 40 to 50 years that is intended to result in a cohesive, sustainable community with economic benefits to Bernalillo County.
24. The request is consistent with the health, safety, and general welfare of the residents of Bernalillo County.

Conditions:

Development Agreement/No Net Expense Agreement

1. A Level A Development Agreement shall be entered into between Bernalillo County and the applicant which reflect this approval and a) clearly identifies responsibilities for development of and infrastructure and other facilities in Santolina; b) requires a link between housing and employment development in Santolina; c) maintains an overall residential density that is consistent with the Albuquerque/Bernalillo County Comprehensive Plan density requirements and is included in the Santolina Level A Plan; d) shall adhere to water use and conservation requirements of Bernalillo County and the Albuquerque/Bernalillo County Water Utility Authority.
2. Bernalillo County and the applicant agree on the "no net expense" clause of the Planned Community Criteria whereby the forthcoming Development Agreement shall explicitly state that Bernalillo County is not and never will be financially obligated to pay any net costs for any portion of future roadway, trail, sidewalk, landscaping, storm drainage, water and sewer, park and open space, fiber optic, natural gas, or electrical infrastructure within Santolina's plan boundaries.

Jobs-housing

3. The Santolina development shall achieve a reasonable balance between residential uses and employment uses such that it maintains the characteristics of a self-sustaining community. As stated in the Santolina Level A Master Plan, an approximate jobs to housing ratio of 2-1 shall be achieved with a goal of creating no less than 75,000 jobs as indicated in the Level A Santolina Plan at the time of full buildout of Santolina. A mechanism for ensuring the ratio shall be provided in subsequent Level B Plans, such that the anticipated job development shall occur in relation to residential development.

Transportation

4. The applicant will revise the Transportation Master Plan of the Santolina Level A Master Plan prior to a Level B submittal, or future development activities such as platting actions or building permits, that generate 500 or more cumulative peak hour trips when upon coordination with the developer BCPWD deems it necessary. Items of revision shall include, but are not limited to, the following (these items shall also be addressed in the Santolina Level A Master Plan):
 - a. The language that clarifies that there shall be no-net expense to the County regarding the funding of transportation improvements associated with the development of Santolina and the removal of all language that releases Santolina from constructing development driven

improvements outside the Santolina boundaries must occur in the appropriate Level A document.

- b. Revise the language that clarifies how the job-to-housing ratio will be monitored, reported, and evaluated during the subsequent Level B submittals for Santolina as it pertains to traffic demands (see page 41). Jobs-to-housing data west of Rio Grande and outside Santolina can be considered in context, provided the data are not located within another master plan area.
 - c. The *Santolina Access Management Plan (SAMP)* with the Traversable Median column added to Access Spacing Standards Table on Page 3 is approved. The SAMP shall be added to the Santolina Level 'A' Transportation Master Plan.
 - d. Revise the Level A Transportation Network model as required by BCPWD. Revision/reanalysis shall include, but not be limited to, the 118th St./I-40 interchange, the new proposed arterial roadways, the new urban center layout, and any other changes to the Santolina roadway network. In accordance with PCC criteria, when substantial variations are identified to the Level A Master Plan, subsequent revision/reanalysis of the Level A Transportation Network model shall be required, when upon coordination with the developer, BCPWD deems it necessary.
 - e. All appropriate items in the Addendum to the Transportation Master Plan dated November 4, 2014 shall be placed in the appropriate Level A document.
5. Written approval from the NMDOT will be obtained prior to the improvement or expansion of State roads identified in the Level A submittal. NMDOT and FHWA (Federal Highway Administration) review and approval will also be required for any Level B plan defining any required modifications and improvements to Interstate 40 and to other state facilities as a result of the development of Santolina and its roadway network. The approvals shall itemize financial obligations with participation and commitments spelled out. The coordination of the timeframes for the offsite roadway improvements and the Plan phasing will also need to be identified.
 6. Funding for arterial streets and linkages, which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program (CIP) or the Metropolitan Transportation Plan (MTP), shall be identified and submitted to the County for recommendation for inclusion in the CIP or the MTP. Any additional arterial streets and linkages or additional transportation capacity identified as part of any Level B analysis to be necessary to serve development of Santolina will be the financial responsibility of the developer.

Utilities/Drainage/Stormwater/Wastewater Management

7. The submitted Drainage (Stormwater) Master Plan, dated December 1, 2014, contains an addendum which includes minor inconsistencies within the calculations to the revised Land Use Master Plan. However, these inconsistencies do not alter the concept of the overall Drainage Master Plan and therefore are acceptable for this Level A Master Plan. The applicant must provide a Drainage (Stormwater) Master Plan consistent with the proposed Level A Master Plan with any Level B submittal.
8. Prior to approval of any subsequent level planning document, the applicant will provide a fully executed development agreement with the ABCWUA. The development agreement shall be structured to ensure compliance with the ABCWUA's existing guidelines, policies, and ordinances and as may be amended from time to time. The development agreement will, at a minimum,

address residential, industrial, institutional and commercial water conservation provisions, guidelines, and design standards needed to meet the water usage requirements stated in the 29 July 2014 ABCWUA letter. The development agreement will also, at a minimum, address infrastructure improvements, direct and indirect potable reuse, and water supply charges, as well as provide a Phasing Plan consistent with ABCWUA policies. The development agreement shall be structured to ensure that total projected water use at ultimate build out will not exceed 14,380 Ac-Ft/Yr as indicated in Table A of applicants 23 May 2014 memorandum included in the 4 November 2014 revision to the Water Master Plan. This condition shall in no way constrain the ABCWUA from imposing such requirements as it may further deem necessary.

9. Prior to approval of any subsequent level planning document, the applicant shall, based on the approved ABCWUA development agreement, provide to the County a written explanation of the projected Master Plan water use and phasing and subsequent level plans within the context of the 2024 Water Conservation Plan Goal and Program Update (July 2013) or subsequent updates.
10. Prior to approval of any subsequent level planning document, the applicant shall provide to the County a water conservation plan that is compliant with Bernalillo County and ABCWUA's guidelines, standards and requirements and which achieves the conservation goals expressed in the Bernalillo County Ordinance and ABCWUA's *2024 Water Conservation Plan Goal and Program Update, July 2013* and which requires compliance with subsequent revisions of the such guidelines, standards, requirements, and plans.
11. Water and wastewater issues for the Santolina Master Planned Community shall be resolved between the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA) and the applicant prior to any Level B approval. An agreement between the applicant and ABCWUA and regarding timing, responsibilities, and maintenance of water and sewer facilities required to service Santolina will be developed and agreed upon prior to any Level B approval.
12. A drainage plan and stormwater management plan shall be submitted at the time of any Level B submittal with provisions for revision as needed to ensure consistency with any EPA-issued municipal separate stormwater system permit provisions or requirements as issued for the Urbanized Area of Bernalillo County.

Air Quality

13. Prior to any Level B Plan approval, the developer shall provide documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards and will demonstrate the intent to comply with air quality standards established by the Environmental Protection Agency (EPA).

Parks, Open Space and Trails, Archaeological Resources

14. Development of Parks, Trails, and Open Space shall comply with the Level A Master Plan. Any changes to the types and general locations of open space or parks and recreation facilities other than neighborhood parks, as shown in the current draft of the Plan, shall require an amendment to the Plan. All capital and operational costs for proposed parks facilities, trails and the open space system shall be identified and included as part of the updated economic analysis prior to the conclusion of the Level A Development Agreement, consistent with the policy of no net expense.

The basis for determining the operational costs will be the population of the unincorporated areas of the County, including Santolina, which is the source of service for the County. Any discrepancies in funding levels proposed for parks, recreation and open space facilities in Santolina identified after the approval of the Level A master plan and development agreement shall be addressed in subsequent Level B plans and development agreements. The subsequent Level B development agreements shall identify the method of conveyance and costs/funding of all recreation and open space facilities, as well as responsibilities for jurisdiction, replacement, maintenance, and operations, and these agreements shall also provide mechanisms for resolving issues related to overlapping jurisdictions, e.g., stormwater management and public open space. The method of conveyance for Major Public Open Space and its phasing shall be identified and included in the Level A development agreement.

15. The Planned Communities Criteria requirements regarding the study and mitigation of archaeological and geotechnical resources shall be followed in Level B and Level C Santolina Plans. Prior to any Level B approval, documentation regarding the completed study and mitigation measures within the Level B plan area shall be provided.

APS

16. The developer will work cooperatively with APS to logically locate sites and (at APS's sole discretion) to secure long-term options for those sites at a mutually agreed to price. Any future schools in Santolina will be developed consistent with the no net expense provisions of the Planned Communities Criteria. A Development Agreement shall be entered into between APS and the developer prior to any Level B submittal for Santolina.
17. Level B and C Plans shall be required prior to development of the Santolina Level A Master Plan Community. Level B and C development agreements, as prescribed in the Planned Communities Criteria, shall be provided. Consistency between Level A, Level B, and Level C plans shall be required throughout the development of Santolina. Changes to the Santolina Level A Plan, including but not limited to overall transportation, infrastructure, open space, and land use networks and configuration approved at Level A, will require approval by the Board of County Commissioners, as required by Section 19.5 of the County Zoning Ordinance.

Development of Santolina and Plan Amendments

18. The Santolina Development Agreement shall include a section that pertains to Interim Uses. This section shall indicate that all sites within the Santolina Level A boundary area governed by a Special Use Permit or any site expected to be developed with local, state and/or federal support shall be governed by Sections 18, Special Use Permits and Section 24, Administration of the Zoning Code until a Level B Plan, affecting such site, has been adopted by Bernalillo County. No building permits or subdivision plats (except for the boundary of the subject property) shall be granted on all remaining sites until a Level B and Level C plan affecting the subject property have been approved. No special use permit shall be issued without a demonstration of available infrastructure and utilities, including water, electricity and sewer, to be installed before, or concurrently with, development of the site.
19. Prior to Level B Plan or Zoning submittals, the boundary of subject property shall be legally platted.

20. Minor corrections to the plan, such as typographical and grammatical corrections, editorial changes agreed to by County staff, or small changes to acreage related to surveying may be incorporated in the final, adopted version of the plan.
21. The request shall comply with all applicable Bernalillo County ordinances and standards.
22. Prior to the Board of County Commissioner's hearing the applicant shall make the following modifications to the Level A Plan (dated 12/1/14) as required by staff and agencies:
 - a) Chapter 4, Zoning, p. 47, under Amendment Process: Remove the language "Substantial changes" and replace with "Amendments"; add that the process also applies to Level B and or Level C Plans.
 - b) Chapter 4, Zoning, p. 47. Add the following sentence under Level A Governance and Interim Uses (after ..Bernalillo County..) "No building permits or subdivision plats shall be granted on all remaining sites until a Level B and Level C plan affecting the subject have been adopted."
 - c) Change the language "publicly funded" on page 92 to "proposed for public funding."
 - d) Chapter 6, Transportation, Level A Master Plan on page 95: remove the sentence "The policy supersedes other policies that may be in place for roadways within Santolina" regarding the SAMP, and remove "(by others)" regarding the extension of Gibson Boulevard.
 - e) Exhibit 1 must be corrected to indicate that the Estrella Development has not been approved by Bernalillo County; a portion of the area shown on the map has been approved for development under the Westland Master Plan.

If you wish to appeal this decision, you must do so by 12:00 noon on **December 29, 2014** in the manner described below. A filing fee of \$75.00 is required for properties consisting of one (1) acre or less, and \$100.00 is required for all others.

APPEALS: Appeal of any denial or approval of an application by the County Planning Commission may be submitted in writing to the office of the Zoning Director within 15 days after the date of the notice of decision by the County Planning Commission.

The date of the notice of decision in question shall not be included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday, the next working day shall be considered as the deadline for filing the appeal.

A building permit or Certificate of Occupancy & Compliance shall not be issued until any appeal is decided, or the time for filing such appeal has expired.

WRITTEN NOTICE OF APPEAL SHALL BE FILED WITH THE ZONING DIRECTOR ON THE PRESCRIBED FORM ALONG WITH PAYMENT OF THE REQUIRED FILING FEE.

If you have any questions, please feel free to contact me directly at 314-0385.

Sincerely,

ENRICO GRADI

Enrico Gradi

Community Development Manager

EG/fs

cc: File

Kevin Grovet, Public Works

Christi L. Tanner, Public Works

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Albuquerque Public Schools, Brad Winter, P.O. Box 25704, Albuquerque, NM 87125

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Sean-Paul VonAncken, 1609 Silver SE, Albuquerque, NM 87106
Tom Gevsz, 124 Edith Blvd. SE, Albuquerque, NM 87102
Andrea Serrano, 411 Bellamah Ave. NW, Albuquerque, NM 87102
John Varsa, 609 Encino Pl. NE, Albuquerque, NM 87102
Sally Bergen, 1908 Caayno de Compania NW, Albuquerque, NM 87107
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BERNALILLO COUNTY LAND USE APPEALS TO THE BOARD OF COUNTY COMMISSIONERS

- Bernalillo County's ordinances, code, and policies mandate that proposed development follow a review and approval process. Zoning staff's and appointed commission's decisions are appealable to a higher level authority. Any person can appeal any zoning staff or commission decision as long as the appeal deadlines are met and appropriate fees are paid. All decisions can ultimately be appealed to a judicial review (District Court).

-There are two major appeal bodies within the County's land use process: the Board of Adjustment/County Planning Commission (BA/CPC), and the Board of County Commissioners (BCC).

APPEALS TO THE BOARD OF COUNTY COMMISSIONERS

-The Board of County Commissioners shall sustain the recommendation of the Board of Adjustment or the County Planning Commission without modification unless the recommendation is appealed.

-Written application for appeal (either approval or denial) to the Board of County Commissioners must be filed by 12 noon, within fifteen (15) days of the written CPC determination, at the Planning & Development Services Department.

-The BCC shall set the matter for hearing and give notice by mail of the time, place and purpose thereof to the appellant and to any interested party who has requested in writing to be so notified.

-The BCC follows the Rules of Procedure of Appeals (see attached General Rules of Procedure).

-Applicants, agents and those in support or opposition to a request are now required to submit all evidence and presentation materials to the County Planning Commission through the staff. When a recommendation is forwarded from the Planning Commission to the Board of County Commissioners, the Board of County Commissioners may only accept new evidence if good cause is shown. If an appeal is filed, it is possible that it will be remanded to the Planning Commission for consideration if new evidence is presented to the Board of County Commissioners that was not presented to the County Planning Commission. The Board will generally make their decision based solely on the evidence in the record at each County Planning Commission hearing.

-Any such decision by the BCC shall, in all instances, be the final administrative decision and shall be subject to judicial review as may be provided by law.

APPLICATION PROCESS- APPEALS TO THE BOARD OF COUNTY COMMISSION Requirements:

1. Written application must be submitted within fifteen days of the written County Planning Commission determination, using the form "Appeal to the County Commission"
2. A written justification for the appeal must be provided with the appeal application.
3. Appeals will have a fee of:
\$75.00- on lots of one acre or less or
\$100.00- on all other appeals

20% Rule Option

- Pursuant to Section 18.G.3 of the County Zoning Code, a protest to invoke the 20% Rule may be submitted in opposition to a CPC recommendation, to require a super-majority decision (4 votes) by the BCC to uphold the CPC recommendation.
- The 20% rule requires a written petition signed by owners of record of land that comprises at least 20% of the land proposed for the change in zone, or 20% of the land not proposed for the change in zone but within 100 feet, excluding right-of-way, of the land proposed for the change in zone.
- If the requirements for the 20% rule are met, the 20% rule will apply to the BCC vote on the appeal.
- The 20% rule requirements and application certification and petition are included in this packet.

Procedure of Appeals

Bernalillo County Board of County Commissioners

Procedure for Quasi-Judicial Hearings. The procedures to be followed for appeals are generally follows: [VRCI]

- A. **Appeal or Public Hearing Time Limits:** A fifteen (15) minute time limit on each party's argument before the Commission may be established with the understanding that the Chair may alter the time limit when the case is unusually complex. Where numerous speakers sign up to present argument, the Chair may assign a time limit of two (2) minutes per speaker, but in any event, each party's argument shall not exceed the total time allowed. In all cases, the maximum time available for proponents should be equal to the maximum time allowed for the opponents. If necessary, a staff person shall be assigned by the County Manager to be the official timekeeper.

The order of presentation and time limits, as set forth in our Rules of Procedure, are as follows:

1. Staff presentation; 5 minutes
2. Appellant's presentation; 10 minutes
3. Opponent(s) presentation; 15 minutes
4. Appellant's summation or rebuttal; 5 minutes
5. Staff Closure; 2 minutes
6. Board discussion and questions
7. Action

Please be aware that the time limits for each side—appellants and opponents—is the total time allowed regardless of the number of persons signed up to speak. So each side will need to decide how to divide the total minutes among the speakers.

- B. In order to focus the Board of County Commissioners on the issues the party is presenting on appeal, they are encouraged to cite to the facts in the record from the County Planning Commission, and present legal arguments based on the facts in the record. No new evidence shall be presented on appeal to the Board of County Commissioners except as provided in paragraph 22.J below.
- C. The County Manager or designee shall describe the quasi-judicial item to be considered and make a presentation pertaining to the item. This presentation shall be limited to five (5) minutes. The Chair shall then inquire as to whether any Commissioner has questions for the staff members who made the presentation.
- D. The zoning applicant, or appellant, or his/her representative will [VRCI] make a presentation pertaining to the application or appeal. This presentation shall be limited to ten (10) minutes. The Chair will once again inquire as to whether Commissioners have questions of the applicant/appellant and the applicant's/appellant's representatives.
- E. The opponents will make a presentation pertaining to the application or appeal. The presentation will be limited to fifteen (15) minutes. The Chair will once again inquire as to whether Commissioners have questions of the opponents or the opponent's representatives.
- F. There will be an opportunity for applicant/appellant rebuttal and summation. This presentation shall be limited to five (5) minutes.
- G. Staff will then be provided an opportunity to present closing comments. There shall be a time limit of two (2) minutes for closing comments.
- H. The Chair will then inquire of the Commissioners as to whether they have further questions of staff, the applicant/appellant or the opponents and will recognize Commissioners who wish to question the parties or staff.

20% Rule Option

- Pursuant to Section 18.G.3 of the County Zoning Code, a protest to invoke the 20% Rule may be submitted in opposition to a CPC recommendation, to require a super-majority decision (4 votes) by the BCC to uphold the CPC recommendation.
- The 20% rule requires a written petition signed by owners of record of land that comprises at least 20% of the land proposed for the change in zone, or 20% of the land not proposed for the change in zone but within 100 feet, excluding right-of-way, of the land proposed for the change in zone.
- If the requirements for the 20% rule are met, the 20% rule will apply to the BCC vote on the appeal.
- The 20% rule requirements and application certification and petition are included in this packet.

- I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.
- J. No new evidence shall be presented by the applicant/appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:
 - i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;
 - ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.
- K. The Commission shall then take action on the item.

20% RULE
CERTIFICATION OF OPPOSITION TO PROPOSED LAND USE CHANGE

The 20% rule may apply to appeals filed before the Board of County Commissioners only! Certification of Protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule requirements are met, the 20% rule will apply to the case and the proposed change in land use must be approved by a vote of four members of the BCC.

APPLICATION PROCESS:

1. Obtain an Appeal Application and a Certification of Opposition to Proposed Zoning Change and Petition Protesting Change in Zoning Regulations forms.
2. Complete the form as follows:
3. Name of Contact person for protest
Address
Phone Number

SUBMITTAL REQUIREMENTS: (20% RULE)

1. A copy of the NOTICE OF DECISION for the case under appeal.
2. Forms with name, address, and signature for each owner asking to be included in the protest.
3. A copy of the Zone Atlas Page for the area indicating the property under consideration for a change in zoning regulation and highlights each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

- I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.
- J. No new evidence shall be presented by the applicant/appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:
 - i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;
 - ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.
- K. The Commission shall then take action on the item.

20% Rule Form

**CERTIFICATION OF OPPOSITION TO PROPOSED ZONING CHANGE
(to be completed, when the 20% rule is invoked only)**

Contact person for protest:

Name _____

Address _____

Phone Number: Work: _____ Home: _____

Submittal requirements:

- ☐ A copy of the notice of decision for the case under appeal.
- ☐ Petition forms with name, address, and signature for each owner asking to be included in the protest. (provided in this packet)
- ☐ A copy of the zone atlas page for the area indicating the property under consideration for a change in zoning regulation and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

Note: The 20% rule applies to appeals filed before the Board of County Commissioners only, not the County Planning Commission. Certification of protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule does apply to the case, the proposed change in zoning regulation must be approved by a vote of four members of the Board of County Commissioners.

For Planning & Development Services Department Use:

Hearing Date: _____ 20% Rule applies: Yes _____ No _____

Received By: _____ Verified by: _____

Date Submitted: _____

20% RULE (to be submitted for the 20% rule)

PETITION PROTESTING CHANGE IN ZONING REGULATIONS

Site of Proposed Change: _____

Case Number: _____

Action Being Protested: _____

THIS SECTION FOR OFFICIAL USE

#	Name of Owner (Not Tenant) (Please Print)	Address of Parcel	Signature	Legal Description UPC Code Size of Property	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					

20% Rule Form

**CERTIFICATION OF OPPOSITION TO PROPOSED ZONING CHANGE
(to be completed, when the 20% rule is invoked only)**

Contact person for protest:

Name _____

Address _____

Phone Number: Work: _____ Home: _____

Submittal requirements:

- ☐ A copy of the notice of decision for the case under appeal.
- ☐ Petition forms with name, address, and signature for each owner asking to be included in the protest. (provided in this packet)
- ☐ A copy of the zone atlas page for the area indicating the property under consideration for a change in zoning regulation and highlighting each of the properties included in the form submitted as part of this protest. The properties should be numbered to match the listings of property owners in the attached forms.

Note: The 20% rule applies to appeals filed before the Board of County Commissioners only, not the County Planning Commission. Certification of protest under the 20% rule must be submitted to the Bernalillo County Planning & Development Services Department no later than one week prior to the scheduled BCC appeal hearing. The department will verify the information presented for the protest and make a determination prior to the hearing date as to whether the 20% rule applies to the appeal. If the 20% rule does apply to the case, the proposed change in zoning regulation must be approved by a vote of four members of the Board of County Commissioners.

For Planning & Development Services Department Use:

Hearing Date: _____ 20% Rule applies: Yes _____ No _____

Received By: _____ Verified by: _____

Date Submitted: _____